

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation
of the Registered Nurse License of
Marsha Mary Eide.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Kathleen D. Sheehy, Administrative Law Judge, on May 15, 2003, at the Office of Administrative Hearings in Minneapolis. The record closed that day.

Wayne L. Sather, Esq., Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-2220, appeared for the Department of Revenue (Department).

Marsha Mary Eide, 2868 135th Avenue NW, Andover, MN 55304-3818, did not appear for the hearing.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner of Revenue shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner of Revenue. Parties should contact Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, MN 55146-2220 or 651/296-8228. The record closes upon the filing of exceptions to the report, or upon the expiration of the deadline for doing so. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62. subd. 2a. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Should Ms. Eide's Registered Nurse license be revoked for failure to pay delinquent taxes, penalties and interest and for failure to file tax returns?

The Administrative Law Judge concludes Ms. Eide's license should be revoked.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On February 3, 2003, the Department sent a Notice of Intent to Revoke License to Marsha M. Eide indicating that the amount of \$2,830.79 was overdue for tax years 1995 and 1996 and that her tax returns were missing for 1998-2001.^[1] The Notice also indicated that the Department intended to notify the Minnesota Board of Nursing for the purpose of revoking her registered nurse license if she failed to pay the overdue amount and failed to file the missing returns by March 3, 2003. The Notice informed Ms. Eide that she could request a hearing before the Office of Administrative Hearings by stating, in writing, the basis for her protest and submitting it by March 3, 2003. On the same date the Department sent a Demand to File Returns for 1998-2001.^[2]

2. In response the Department received a faxed message from Robert Eide and Marsha Eide seeking an extension of the Department's intent to revoke Ms. Eide's license.^[3] The Department accepted this document as a request for hearing.

3. On April 10, 2003, the Department issued a Notice and Order for Hearing, which was served upon Ms. Eide by U.S. mail. The Notice set a hearing for Thursday, May 15, 2003, at 10:30 a.m. in Minneapolis. The Notice specifies, in bold print:

The Respondent's failure to appear at the hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in this Notice and order may be accepted as true, and its proposed action may be upheld.

If any party has good cause for requesting a delay of the hearing, the request must be in writing to the Administrative Law Judge at least five days prior to the hearing. A copy of the request must be served on the other party.^[4]

4. At approximately 6:30 a.m. on the morning of May 15, 2003, counsel for the Department received a message from Robert Eide requesting a continuance of the hearing. Counsel for the Department returned the call and advised Eide to contact the Administrative Law Judge.

5. The hearing in this matter commenced at 10:30 a.m. on May 15, 2003. As noted above, Ms. Eide did not appear, nor did any other person appear on her behalf. Counsel for the Department informed the Administrative Law Judge about Mr. Eide's earlier contact. The Department requested a default order and submitted its hearing exhibits for inclusion in the record.

6. At approximately 10:50 a.m. on May 15, after the conclusion of the hearing, the Administrative Law Judge received a message from Robert Eide, left at 10:05 a.m. that morning, stating that Ms. Eide was not ready for the hearing and that she was not in Minnesota on that date. He asked that the Administrative Law Judge return his telephone call.

7. As of the date of the hearing, Ms. Eide owed \$335.72 in past due individual income taxes, penalties, and interest for the 1995 and 1996 tax years.^[5] Since the Notice of Intent to Revoke was mailed, the amount owing had been reduced by garnishment of a bank account. Ms. Eide has yet to file returns for the years 1998-2001.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Department and the Administrative Law Judge have authority to consider the issues set out in the Notice of and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50 and 270.72, subd. 1.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. Respondent has failed to appear at the hearing and failed to properly seek a continuance of the hearing. Therefore, the Respondent is in default under Minn. R. 1400.6000. The allegations in the Notice and Order for Hearing are taken as true.

4. Minn. Stat. § 270.72, subd. 1, provides as follows:

The state or a political subdivision of a state may not issue, transfer, or renew, and must revoke a license for the conduct of a profession, occupation, trade or business if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes or has not filed returns. If the applicant taxpayer does not owe delinquent taxes but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed.

5. Although the Respondent currently owes less than \$500 in delinquent taxes, penalties, and interest, she has failed to file returns for 1998

through 2001 and has received more than 90 days' written notice to file the returns or risk revocation of her nursing license.

6. The Department has met the statutory requirements for notifying the Minnesota Board of Nursing that Respondent's nursing license should be revoked.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue issue a Notice of License Revocation to the Minnesota Board of Nursing indicating that the Board of Nursing must revoke the Respondent's nursing license.

Dated this 21st day of May, 2003.

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape Recorded, default.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.62, subd. 2a, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

^[1] Ex. 5.

^[2] Ex. 4. The Department had previously requested missing returns for 1998 and 1999 in January 2001 and April 2002. See Exs. 2 and 3.

^[3] Ex. 6.

^[4] Notice and Order for Hearing at 2 (emphasis in original).

^[5] Ex. 1.